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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re:

ARS INVESTMENT GROUP, LLC,

Debtor

Case No.: 15-12885-A-11

Chapter 11

DC No. HLF-2

Date: August 19, 2015

Time: 1:30 p.m.

Place: Dept. A, Ctrm 11, Fifth Floor

Judge: Hon. Fredrick E. Clement

MOTION TO SELL REAL PROPERTY FREE AND CLEAR
OF LIENS AND OTHER INTERESTS

ARS Investment Group, LLC ("**Debtor**" or "**Seller**") hereby moves the Court for authority to sell real property known as 18931 Via Sereno, Yorba Linda, California 92886-4127 (the "**Property**") to FS Property Investments, LLC ("**Buyer**") for the purchase price of \$790,000.00, other than in the ordinary course of business, free and clear of liens and other interests pursuant to 11 U.S.C. §§363(b) and (f) (the "**Motion**").

In support thereof, Debtor respectfully represents the following:

1. This Court has jurisdiction under 28 U.S.C. §1334 and 11 U.S.C. §363.

This is a core proceeding under 28 U.S.C. §157(b)(2)(A) & (N).



1 2. Venue is proper in this Court pursuant to 28 U.S.C. §1409 because
2 Debtor's chapter 11 bankruptcy case is pending in this district.

3 3. The Property was scheduled as an asset in Debtor's bankruptcy schedules
4 which identify Debtor's interest in the Property with a value of \$790,000.

5 4. On June 30, 2015, prior to filing bankruptcy, Debtor accepted an offer
6 from Buyer for \$790,000.00 for the Property. The principal terms of the sale
7 agreement include the following:

- 8 a. Property is being sold "As Is";
9 b. Total purchase price -- \$790,000.00;
10 c. Buyer has made a \$25,000 deposit;
11 d. Balance due at closing -- \$765,000.00;
12 e. Buyer agrees to pull all permits required by City of Yorba Linda to bring
13 the Property up to code;
14 f. Seller to remove any lis pendens;
15 g. The sale is subject to overbidding at the hearing on the sale; and
16 h. The sale is subject to Bankruptcy Court approval.

17 5. A true and correct copy of the sale agreement, addendum, and deposit
18 check are filed collectively as Exhibit "A" to the Declaration of Alex Kodnegah filed in
19 support.
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21 6. The Property is subject to two deeds of trust. The first deed of trust is in
22 favor of CA TD Specialists, which as of the petition date was approximately
23 \$523,000.00. The second deed of trust is in favor of the Robert and Rosina Korda living
24 Trust, which as of the petition date was approximately \$230,000.00.
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1 7. There are outstanding property taxes owed to the Tax Assessor for
2 Orange County in the approximate amount of \$11,000.00. These outstanding taxes
3 will be paid contemporaneously with the closing.
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5 8. The Property is subject to a lis pendens recorded by the City of Yorba
6 Linda for permit issues and alleged code violations. The Buyer has agreed to bear
7 responsibility for any outstanding permit or other code violation issues, as a condition
8 of sale. Debtor anticipates that the City of Yorba Linda will cooperate in releasing its lis
9 pendens in light of the Buyer's willingness to resolve the permit/code violation issues.
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11 9. The Property is also subject to a lis pendens recorded by Matthew and
12 Linda Bovee, Trustees of the Bovee Family Trust. This encumbrance is disputed. In
13 2008, the Bovees obtained a judgment against Alex Kodnegah, personally, in the
14 amount of \$171,367.47. That judgment was not and could not be proper against
15 Debtor because Debtor was not even formed until 2013. On or about April 8, 2015,
16 the Bovees filed suit in Orange County Superior Court against both Debtor and Mr.
17 Kodnegah. Neither the Debtor nor Mr. Kodnegah have been served with the lawsuit to
18 date. The Bovees also recorded a notice of lis pendens shortly after filing their lawsuit.
19 The Bovees allege alter ego and other theories in an unsuccessful attempt to cause
20 Debtor to bear some responsibility for the judgment against Mr. Kodnegah. As part of
21 this Motion, Debtor requests that the Court authorize the sale free and clear of the
22 Bovees' disputed cloud on title.
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1 10. Both Buyer's and Seller's brokers have waived their commissions on the
2 sale. For this reason, Debtor did not seek approval of the employment of its broker.
3 Title and escrow fees are estimated to be approximately \$2,000.
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5 11. All debts, with the exception of the disputed debt to the Bovees,
6 including any liens or other security interests encumbering the Property will be
7 satisfied before or simultaneously with the transfer of title or possession to the Buyer.
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9 12. As explained in the Declaration of Alex Kodnegah filed in support, Debtor
10 has a sound business justification for the proposed sale to the Buyer or an alternative
11 higher bidder. Here, Debtor is selling the Property to settle the first and second deed
12 of trust holders for the Property. The lis pendens in favor of the City of Yorba Linda
13 will be released, and the property taxes will be paid. The sale will actually result in net
14 proceeds to the bankruptcy estate. The sale will also prevent the loss of the Property
15 to foreclosure.
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19 13. The proposed sale is justified because the price Buyer is willing to pay is
20 fair and reasonable. The Property was marketed for approximately six months prior to
21 reaching an agreement with Buyer. As disclosed in Debtor's bankruptcy schedules, the
22 Property was severely vandalized on May 13, 2015. Vandals removed the kitchen and
23 master bath in addition to severely damaging other portions of the Property. This
24 means that the Buyer will need to pull all permits for and install a new kitchen and
25 master bathroom. There are also significant issues related to the pool, which were
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1 unrelated to the vandalism. The Buyer will bear responsibility for and resolve these
2 issues after closing. The Property is a major fixer-upper, which will require six figures
3 to complete. As a result of the significant vandalism, damage to the Property, and
4 other necessary repairs, Debtor believes the price of \$790,000 is fair and reasonable.
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6 14. Notice of the proposed sale is being provided to all parties and entities
7 who have a claim on the Property, who appear on the master service list and as
8 scheduled in Debtor's bankruptcy schedules. Debtor is also providing notice to the
9 Orange County Treasurer-Tax Collector, who was inadvertently omitted from the
10 original bankruptcy schedules.
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12 15. This sale is subject to higher and better bids at the time of the hearing on
13 the Motion. Buyer is aware that the sale is subject to higher and better bids at the
14 time of the hearing on the Motion.
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17 AUTHORITY

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19 16. 11 U.S.C. §363(b)(1) authorizes the sales of property of the estate "other
20 than in the ordinary course of business." To invoke Section 363(b)(1), the movant must
21 articulate a business justification for his actions. *In re Lionel Corporation*, 722 F.2d
22 1063, 1071 (2nd Cir. 1983). As explained above, Debtor has exercised its best business
23 judgment in agreeing to sell the Property as proposed.
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1 17. Sale of a property under Section 363 is proper in one of three ways,
2 including a private sale with opportunity for overbid. Fed.R.Bankr.P. 6004(f)(1); *In re*
3 *Mama's Original Foods, Inc.*, 234 B.R. 500, 505 (Bankr. C.D. Cal. 1999).
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5 18. Section 363(f) of the Bankruptcy Code additionally authorizes a debtor-
6 in-possession to sell a property under Section 363(b)(1) free and clear of any and all
7 liens, claims, encumbrances or interests if: (i) such proposed sale is permitted under
8 applicable non-bankruptcy law; (ii) any party asserting a lien, claim or interest consents
9 to such proposed sale; (iii) if the interest at issue is a lien, the purchase price for the
10 property is greater than the aggregate amount of all liens on the property; (iv) the
11 interests at issue is the subject of a bona fide dispute; or (v) the party asserting the
12 claim or interest could be compelled, in a legal or equitable proceeding , to accept a
13 money satisfaction for such interest. *See* 11 U.S.C. §363(f); *In re Elliot*, 94 B.R. 343, 345
14 (E.D. Pa. 1988) (finding that Section 363(f) is written in the disjunctive and a
15 bankruptcy court may approve a sale "free and clear" provided at least one of the
16 conditions stated above is met).
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22 19. In this case, Debtor has articulated a good business justification for the
23 sale as explained above and in the Declaration of Alex Kodnegah filed in support of the
24 Motion. The sale price is fair and reasonable particularly in light of the severe damage
25 and vandalism to the Property. The proposed Buyer has agreed to bear responsibility
26 for those repairs, which are estimated to be in the six-figure range. Moreover, the sale
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1 results in the payment of all undisputed liens and encumbrances affecting the
 2 Property.

3 20. Debtor has also satisfied the requirements under Section 363(f) for a sale
 4 free and clear of liens and other interests. The purchase price for the Property exceeds
 5 the value of any undisputed liens, encumbrances, costs of sale, and will actually result
 6 in net proceeds to the Bankruptcy Estate. See 11 U.S.C. §363(f)(3).
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9 21. The claim by the Bovees and related lis pendens is disputed and the
 10 subject of a bona fide dispute. Debtor submits that Section 363(f)(4) permits the sale
 11 of the Property free and clear of the Bovees' lis pendens and disputed claim.
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13 RELIEF REQUESTED

14 22. By this Motion, Debtor seeks an order providing that:

- 15 a. The Motion be granted;
- 16 b. Debtor be authorized to sell the Property, as described herein, to FS
 17 Property Investments, LLC, subject to higher and better bids at the
 18 hearing;
- 19 c. The sale be free and clear of liens pursuant to 11 U.S.C. §363(f)(2) as to
 20 CA TD Specialists, Robert and Rosina Korda Living Trust, and the County
 21 of Orange Tax Assessor provided those liens are paid in full or as
 22 otherwise agreed by the parties;
- 23 d. The sale be free and clear of the lis pendens and claim of Matthew and
 24 Linda Bovee , Trustees of the Bovee Family Trust pursuant to 11 U.S.C.
 25 §363(f)(4);
- 26 e. The sale be free and clear of the lis pendens by the City of Yorba Linda
 27 in light of Buyer's assumption of responsibility for any code or permit
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1 issues related to the Property and consent by the City of Yorba Linda
2 pursuant to 11 U.S.C. §363(f)(2);

- 3 f. all costs of sale consisting of escrow and title fees be paid at closing;
4 g. the 14-day time period provided by Federal Rule of Bankruptcy
5 Procedure 6004(h) is waived; and
6 h. any further relief as is just and appropriate under the circumstances.

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8 **WHEREFORE**, Debtor respectfully requests this Court enter an order authorizing
9 the sale of the above-described property in accordance with the terms laid out in this
10 motion, waiving the 14-day time period laid out in Federal rule of Bankruptcy
11 Procedure 6004(h), and further relief that the Court deems just and proper.

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13 Dated: July 29, 2015

HARRIS LAW FIRM, PC

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16 Justin D. Harris, Esq.